

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

SCMS, Inc.

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)
)
)File No.: EB-SED-16-00022161¹

CITATION AND ORDER

ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: September 23, 2016

Released: September 27, 2016

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation) notifies SCMS, Inc. (SCMS) that it marketed in the United States uncertified external RF power amplifiers and LPFM transmitters capable of operating on frequencies below 144 MHz. SCMS should cease marketing these devices and take immediate steps to come into compliance with the Communications Act of 1934, as amended (Act), and the Commission's rules (Rules). If SCMS fails to comply with these laws, it may be liable for significant fines.

2. **Notice of Duty to Comply with the Law:** We issue this Citation pursuant to Section 503(b)(5) of the Act, which states that the Commission may not impose monetary forfeitures against non-regulatees who violate the Act or the Rules unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.² Accordingly, SCMS is hereby on notice that it must comply with Section 302(b) of the Act and Sections 2.815(b) and 73.1660(a)(2) of the Rules.³ If SCMS subsequently engages in any conduct of the type this Citation describes, SCMS may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.⁴

II. BACKGROUND

3. The Enforcement Bureau's Spectrum Enforcement Division (Division) received a complaint alleging that SCMS is importing and marketing uncertified external RF power amplifiers and LPFM transmitters manufactured by BW Broadcast Limited (BW Broadcast). On November 8, 2013, Division staff observed the following external RF power amplifiers for sale on SCMS's website, www.scmsinc.com: BW Broadcast PA150, BW Broadcast PA300, BW Broadcast PA600 and BW

¹ The investigation initiated under File No. EB-SED-13-00009675 was subsequently assigned File No. EB-SED-16-00022161. Any future correspondence with the FCC concerning this matter should reflect the new case number.

² See 47 U.S.C § 503(b)(5).

³ 47 U.S.C. § 302(a)(b); 47 CFR §§ 2.815(b), 73.1660(a)(2).

⁴ See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*") (emphasis added).

Broadcast PA 1000.⁵ On the same date, Division staff observed the following transmitters on SCMS's website: TX25 V2, TX50 V2, TX150 V2, and TX300 V2.⁶ On November 15, 2013, the Division issued to SCMS a letter of inquiry (LOI)⁷ directing the company to submit a sworn written response to a series of questions relating to the allegation.

4. In its December 13, 2013 response,⁸ SCMS confirmed that it imports and markets products manufactured by BW Broadcast (a company registered in the UK), including the "PA series amplifiers"⁹ and the LPFM transmitters identified in the LOI.¹⁰ SCMS stated that the external power amplifiers and LPFM transmitters have FCC certification and provided a letter from BW Broadcast to support its claim.¹¹ BW Broadcast states that the external RF amplifiers marketed by SCMS are identical to the amplifiers integrated in the certified FM transmitters manufactured by BW Broadcast.¹² According to BW Broadcast, "an FM amplifier that is part of a certified FM transmitter, which essentially has the same conducted and RF characteristics as the transmitter is deemed to be compliant" with the FCC rules and regulations.¹³ In addition, BW Broadcast asserts that the transmitters imported and marketed by SCMS "are by all intents and purposes the same models already certified by an FCC approved test lab...."¹⁴

III. APPLICABLE LAW AND VIOLATIONS

5. Section 2.815(b) of the Rules states that "No person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier capable of operation on any frequency or frequencies below 144 MHz unless the amplifier has received a grant of certification...."¹⁵ Contrary to BW Broadcast's belief, an amplifier that is sold as part of a certified FM transmitter may not be marketed as a stand-alone product without first obtaining a separate certification. Additionally, Section 73.1660(a)(2) of the Rules states that an LPFM transmitter shall be certified for compliance with the requirements of the Rules.¹⁶ BW Broadcast's contention that the transmitters marketed by SCMS are essentially the same as its already certified transmitters does not exempt those models from the certification requirement. Accordingly, based upon the information before us, we find that SCMS marketed the aforementioned BW Broadcast external RF power amplifiers and LPFM transmitters without Commission authority.

⁵ See SCMS, Inc., <http://www.scmsinc.com> (last visited July 14, 2016). On the recent visit to the website, Division staff observed that SCMS, Inc. marketed the BW Broadcast PA300, BW Broadcast PA600 and BW Broadcast PA1000.

⁶ On July 14, 2016, Division staff observed that SCMS, Inc. marketed the following transmitters on its website: TX50 V2 and TX300 V2.

⁷ Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mr. Bob Cauthen, President, SCMS, Inc. (November 15, 2013) (on file in EB-SED-16-00022161).

⁸ Letter from Bob Cauthen, President, SCMS, Inc., to Karen Mercer, Spectrum Enforcement Division, FCC Enforcement Bureau (December 13, 2013) (on file in EB-SED-16-00022161).

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at Attachment D (Letter from Scott Incz, CEO, BW Broadcast Limited to Mr. Bob Cauthen, President, SCMS, Inc. (undated) (on file in EB-SED-16-00022161)).

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See 47 CFR § 2.815(b).

¹⁶ See 47 CFR § 73.1660(a)(2).

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

6. SCMS may respond to this Citation within 30 calendar days from the release date of this Citation by either of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to SCMS's place of business. If SCMS requests a teleconference or personal interview, please contact Karen Mercer at (202) 418-2647. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If SCMS prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

7. All written communications should be sent to the address below.

Neal McNeil, Assistant Division Chief
Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Re: EB-SED-16-00022161

8. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, SCMS should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. SCMS should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. SCMS should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

9. We advise SCMS that it is a violation of Section 1.17 of the Rules¹⁷ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

10. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.¹⁸

¹⁷ 47 CFR § 1.17.

¹⁸ 18 U.S.C. § 1001.

11. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

12. Finally, we warn SCMS that, under the Privacy Act of 1974,¹⁹ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure SCMS's compliance with the Act and Rules.

V. FUTURE VIOLATIONS

13. If, after receipt of this Citation, SCMS again violates Section 302(b) of the Act and Sections 2.815(b) and 73.1660(a)(2) of the Rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures of up to \$16,000 for each such violation or each day of a continuing violation, and up to \$122,500 for any single act or failure to act.²⁰ The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.²²

VI. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act,²³ SCMS, Inc. must cease and desist from marketing the aforementioned BW Broadcast external RF power amplifiers and LPFM transmitters in violation of Section 302(b) of the Act and Sections 2.815(b) and 73.1660(a)(2) of the Rules.²⁴

15. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Mr. Bob Cauthen, President, SCMS, Inc., 10201 Rodney Boulevard, Pineville, North Carolina 28134.

FEDERAL COMMUNICATIONS COMMISSION

Bruce D. Jacobs
Chief
Spectrum Enforcement Division
Enforcement Bureau

¹⁹ 5 U.S.C. § 552a(e)(3).

²⁰ See 47 U.S.C. §§ 401, 501, 503; 47 CFR § 1.80(b)(7) (2013). This amount is subject to further adjustment for inflation (see 47 CFR § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

²¹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

²² See *supra* paragraphs 3-4.

²³ 47 U.S.C. §§ 154(i), 154(j).

²⁴ 47 U.S.C. § 302(a)(b); 47 CFR §§ 2.815(b), 73.1660(a)(2).